85-1849

Supreme Court, U.S.
FILED
MAY 19 1986
JOSEPH F. SPANIOL, JR.
CLERK

NO._____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1985

GLEN WALKER ET AL.,

PETITIONER,

VS.

STATE OF IOWA ET AL.,

RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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QUESTIONS PRESENTED FOR REVIEW

1. Did the placing of Florence Walker under the legal jurisdiction of her court adversaries before the completion of her conservatorship and estate proceedings, and did the court order (Appendix E) which prevented the executor and his attorney from defending her interests in a contest of her will, violate Florence Walker's and her estate's rights under the 5th and 14th amendments to the United States Constitution of due process of law and equal protection of the laws?

2. Does the 21st Amendment to the Iowa Constitution (Page 3) including those provisions which in the Judicial selection process grants special voting rights to lawyers that are denied to other citizens and which makes District Court Judges chairmen of the nominating Commissions that select their fellow District Court Judges and which makes a Supreme Court Judge Chairman of the commission that selects his fellow member on the

Supreme Court violate Petitioners rights under the 5th and 14th Amendments to the United States Constitution of due process of law and equal protection of the laws?

3. Does the transfer of Judges, that Petitioners cannot help select or vote upon to dismiss, from another Judicial Election District to preside over their legal proceedings, violate Petitioners rights under the 5th and 14th Amendments to the United States Constitution of due process of law and equal protection of the laws?

4. Should the District Court have dismissed the Petitioners complaint without allowing a full hearing and should the Court of Appeals, stating that it was frivolous and without merit, have dismissed the subsequent appeal?

PARTIES IN THE

EIGHTH CIRCUIT COURT OF APPEALS

Glen Walker and Benford Walker "next Friend" of Florence Walker, Florence Walker, Deceased, and the Estate of Florence Walker; Glen Walker and Benford Walker, heirs of Florence Walker; and Glen Walker, individually; and Benford Walker, individually,

Plantiff-Appellants

The State of Iowa; the Judicial Dept. of the State of Iowa, including the Supreme Court, Court of Appeals and the Polk County District Court; Chief Justice W. W. Reynoldson of the Iowa Supreme Court; Thomas J. Miller in his official capacity as Iowa Attorney General; the Valley National Bank and Trust Co. of Des Moines, administrator of the Estate of Florence Walker and its attorney Bernard O'Malley,

Defendants-Appellees

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PETITION FOR WRIT OF CERTIORARI

The Petitioners respectfully ask the Supreme Court to issue a writ of Certiorari to the United States Court of Appeals for the Eighth Circuit in order to review the judgment of that court entered January 7, 1986.

OPINION BELOW

The court of appeals entered its decision dismissing the Plaintiffs-Appellants appeal from the judgment of the United States District Court for the Southern District of Iowa, Central Division on January 7, 1986. A copy of the opinion is Appendix A. A copy of the judgment is Appendix B. The order of Dismissal of the District Court was entered on May 31, 1985. A copy of that Order of Dismissal is Appendix D.

JURISDICTION

The judgment sought to be reveiwed was entered on January 7, 1986. The Court of Appeals dismissed the appeal. The order of

the Court of Appeals which denied the Appellants Petition for Rehearing was entered on February 20, 1986. The jurisdiction of the Supreme Court is based on title 28, Section 1254 (1) of the United States code.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Amendment V:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

United States Constitution, Amendment XIV, Section 1:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law;

nor deny to any person within its jurisdiction the equal protection of the laws.

Iowa Constitution. Amendment 21 (1962): Code of Iowa (1985) to "Terms--Judicial Elect."

[21] **Article five (V)** is amended in the following manner:

1. Section four (4) is amended by striking from lines eight (8) and nine (9) of such section the words, "exercise a supervisory" and inserting in lieu thereof the words, "shall exercise a supervisory and administrative".

2. Sections three (3), five (5), nine (9) and eleven (11) are repealed.

3. The following sections are added thereof:

Vacancies in courts. Sec. 15 Vacancies in the Supreme Court and District Court shall be filled by appointment by the appropriate judicial nominating commission. Three nominees shall be submitted for each Supreme Court vaccancy, and two nominees shall be submitted for each District Court vacancy. If the Governor fails for thirty days to make the appointment, it shall be made from such nominees by the Chief Justice of the Supreme Court.

State and district nominating commissions. Sec. 16. There shall be a State Judicial Nominating Commission. Such commission shall make nominations to fill vacancies in the Supreme Court. Until July 4, 1973, and thereafter unless otherwise provided by law, the State Judicial Nominating Commission shall be composed and selected as follows: There shall be not less than three nor more than eight appointive members, as provided by law, and an equal number of elective members on such Commission, all of whom shall be electors of the state. The appointive members shall be appointed by the Governor subject to confirmation by the Senate. The

elective members shall be elected by the resident members of the bar of the state. The judge of the Supreme Court who is senior in length of service on said Court, other than the Chief Justice, shall also be a member of such Commission and shall be its chairman.

There shall be a District Judicial Nominating Commission in each judicial district of the state. Such commissions shall make nominations to fill vacancies in the District Court within their respective districts. Until July 4, 1973, and thereafter unless otherwise provided by law, District Judicial Nominating Commissions shall be composed and selected as follows: There shall be not less than three nor more than six appointive members, as provided by law, and an equal number of elective members on each such commission, all of whom shall be electors of the district. The appointive members shall be appointed by the Governor. The elective members shall be elected by the resident members of the bar of the district. The district judge of such district who is senior in length of service shall also be a member of such commission and shall be its chairman.

Due consideration shall be given to area representative in the appointment and election of Judicial Nominating Commission members. Appointive and elective members of Judicial Nominating Commissions shall serve for six year terms, shall be ineligible for a second six year term on the same commission, shall hold no office of profit of the United States or of the state during their terms, shall be chosen without reference to political affiliation, and shall have such other qualifications as may be prescribed by law. As near as may be, the terms of one-third of such members shall expire every two years.

Iowa Rule of Civil Procedure 375: Iowa Court Rules 1985

> **375. Recall and transfer of judges.** The supreme court, by and through the chief justice may at any time order the recall of eligible retired judges for active service, and the transfer of active judges and other court personnel from one judicial district to another to provide a sufficient number of judges to handle the judicial business in all districts promptly and efficiently. [Report 1969]

STATEMENT OF THE CASE

On September 6, 1984 Glen Walker and Benford Walker individually and as "next Friend" of Florence Walker filed a complaint in the Federal District Court alleging they had been deprived of their 5 and 14th Amendment Constitutional rights based on facts set out in the complaint.

Benford and Glen Walker are sons of Florence Walker and had lived with her and farmed practically all their lives.

Prior to Florence Walker's death, in an involuntary conservatorship proceedings initiated by her other children the Guardian ad litem who was secured by the

petitioner did not answer the Petition as is required and at the hearing only the petitioners case was heard. Florence Walker was thus unable to present her defense to the charges against her. After the shortened Proceeding the Petitioners in essence were appointed her conservator, both having the same attorney. In a subsequent will contest, the Supplemental order, Appendix E, denied the executor of her estate or her attorney the right to defend Florence Walker's will. After the will contest those contesting the will were again placed over her interests, the lawyer for the contestants, being a part owner and member of the board of directors of the Valley National Bank which was named administrator. The petitioners in the conservatorship portion and the contestants in the will contest were essentially the same, being children of Florence Walker.

After their appointments the conservator and Administrator would not support

Florence Walker's interests. For example they let an accident case involving Florence Walker carry on for 9 years in the local court, once allowing it to be thrown out of court.

Mr. O'Malley who was hired to protect Florence Walker's interests as set out in her will has now changed sides and is attorney for the administrator while in that capacity he stated that it was a good thing the farm house that contained Florence Walker's household furnishings, and personal items had burned down (Bernard O'Malley's Motion to Dismiss complaint).

More facts can be found in the Complaint and in the Resistance to the Motions to Dismiss the Complaint filed in the District Court.

In the proceedings involving Florence Walker in the Polk County of Iowa District Court hearings were held no less than four times before judges who were transferred from a different election District.

The judges were serving under the prescription of the 21st Amendment to the Iowa Constitution. That Amendment grants to lawyers special voting rights in the judicial selection process and designates Judges as chairman of the Judicial Nominating Commissions.

As a result of the foregoing facts the Plaintiffs (Petitioners herein) filed a complaint in the United States District Court on September 6, 1984 in order that their constitutional claims, including the unconstitutionality of the 21st Amendment to the Iowa Constitution, could be addressed. Jurisdiction of the Federal Court was based on the fact that the Plaintiffs were deprived of rights guaranteed by the United States Constitution as well as on Title 28, United States Code, Section 1343 and Title 42, United States Code, Section 1983.

After the District Court dismissed the case without a hearing, the Plaintiffs appealed the action to the United States Court of Appeals for the Eighth Circuit

which upheld the District Courts dismissal. This Petition for Writ of Certiorari follows.

ARGUMENT

As seen from the proceeding statement there is no question that Florence Walker was denied due process of law, not being allowed to defend her cause and not being allowed counsel, Powell v. Alabama, 287 U.S. 45 which states:

> "If in any case civil or criminal, a state or federal court were arbitrarily to refuse to hear a party by counsel, employed by and appearing for him, it reasonably may not be doubted that such a refusal would be a denial of a hearing and therfore of due process in the constitutional sense."

Also once her court opponents were named conservator and administrator by the court, giving them legal jurisdiction over her person and finances, Florence Walker had no way to contest the improper hearings that put her under her opponents jurisdiction or resist their further efforts to deprive her of her property and legal

rights. In short she had no access to the Court. For this reason the District Court should have heard this case.

For the further reason that sooner or later we all reach that stage, where, though still strong of mind we may be physically weak and subject to legal abuse, as was Florence Walker, the Supreme Court should review this issue.

Benford and Glen Walker as "Next Friend" of Florence Walker and also in their own right challenged the constitutionality of the 21st Amendment to the Iowa Constitution and the transferring of judges from one election District to another. These issues have not been ruled on by the Federal Courts. For that reason alone the complaint should not have been dismissed and the Appeals Court should have so held. An allegation of a denial of voting rights should be carefully reviewed Kramer v. Union School District, 395 U.S. 691.

Federal jurisdiction is proper because the construction of the amendment is so plain no state interpretation is necessary Harman v. Forssenius 380 U.S. 528. There is no adequate remedy in the State Court, Gibson v. Berryhill 411 U.S. 564 because of the personal interest of the judges in the case and the Iowa Court has so recognized and will not address constitutional issues involving their own powers and functions, Koehler v. Hill 60 Iowa 543. Because all of the citizens of the State of Iowa have an equal interest in the courts, the Supreme Court should review this issue.

The Judges, Pulliam v. Allen 466 U.S. 522, the courts Supreme Court of Virginia v Consumers Union 446 U.S. 719, the Attorney General Doe v. Bolton 319 F. Supp 1048 (1970) and the State of Iowa which has given its consent under Section 613.8 Iowa Code are all proper parties to the District Court action.

The transfer of judges is governed by

the same argument above.

The Plainiffs presented a valid claim for which relief could be granted because for all the above reasons the Plainiffs were and are entitled to injunctive and declaratory relief. Supreme Court of Virginia v. Consumers Union 446 U.S. 719.

The Petitioners in this court are farmers of limited means and they are proceeding Pro se. They make no claim of being expert at presenting their case, but under the rule set out in Haines v. Kerner 404 U.S 519 and Conley v. Gibson 355 U.S. 41 their complaint should not have been dismissed.

CONCLUSION

For the foregoing reasons and all other reasons inherent in this case the Petitioners respectfully ask that the Supreme Court issue a Writ of Certiorari in order to review the judgment of the Eighth Circuit Court of Appeals and have a full review of the important constitutional issues presented for review in this petition.

Respectfully submitted,

Glen Walker

Glen Walker

Benford Walker

Benford Walker
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APPENDIX

Appendix A

OPINION OF THE UNITED STATES COURT OF APPEALS

FOR THE EIGHT CIRCUIT

GLEN WALKER, ET AL.,
Appellants.

v.

STATE OF IOWA, ET AL.,
Appellees.

No. 85-1833-SI

United States Court of Appeals
For The Eighth Circuit

January 7, 1986

Glen and Benford Walker appeal pro se from the district court's dismissal of their civil rights suit for failure to state a claim. They allege that they and their deceased mother, Florence Walker, were deprived of due process of law in state court proceedings concerning the conservatorship of Florence Walker and probate of her will. They also contend that the twenty-first amendment to the Iowa Constitution violates the Federal Constitution because it denies them the right to vote for state judges.

We have carefully reviewed the record and we find appellant's arguments frivolous

and without merit. Accordingly, the appeal is dismissed. See 8th Cir. R. 12(a).

Appendix B

JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

GLEN WALKER, ET AL.,
Appellants.

v.

STATE OF IOWA, ET AL.,
Appellees.

No. 85-1833-SI

United States Court of Appeals
For the Eighth Circuit

January 7, 1986

This appeal from the United States District Court was submitted on the record of the district court and briefs of the parties without oral argument.

After consideration it is ordered and adjudged that the appeal be dismissed. See 8th Cir. R. 12(a).

Appendix C

ORDER OF THE UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT ON

APPELLANTS PETITION FOR REHEARING

GLEN WALKER, ET AL.,
Appellants.

v.

STATE OF IOWA, ET AL.,
Appellees.

No. 85-1833-SI

United States Court of Appeals
Eighth Circuit

February 20, 1986

Appellants' petition for rehearing en banc has been considered by the Court and is denied.

Petition for rehearing by the panel is also denied.

Appendix D

ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF IOWA, CENTRAL DIVISION

GLEN WALKER, ET AL.,
Plaintiffs,

v.

STATE OF IOWA, ET AL.,
Defendants.

No. 84-650-B

United States District Court
For Southern Iowa,
Central Division

May 31, 1985

The court has before it two motions to dismiss plantiffs' section 1983 action, one submitted by defendants Valley National Bank and Trust Company of Des Moines, administrator of the Estate of Florence Walker, and Bernard J. O'Malley, attorney for the bank, and another submitted by the remaining defendants. Plaintiffs have resisted both motions. Plaintiffs and some defendants have requested oral argument; however, the court believes it is not necessary. The motions are now submitted.

For the reasons stated in defendant's motions to dismiss and memorandums in support of motions to dismiss, the motions to dismiss are granted and IT IS ORDERED that plaintiffs' complaint be dismissed.

IT IS FURTHER ORDERED that the request for attorney's fees by defendants Valley National Bank and Trust Company of Des Moines and Bernard J. O'Malley is denied.

DATED this 31st day of May, 1985.

Appendix E

SUPPLEMENTAL ORDER OF THE DISTRICT COURT OF THE STATE OF IOWA IN AND FOR POLK COUNTY

IN THE MATTER OF THE ESTATE OF FLORENCE E. WALKER, DECEASED.

Probate No. 25-8339

The District Court of the State of Iowa
In and For Polk County

March 24, 1980.

On the 10th day of March 1980 the Court filed herein an order on a pretrial conference which was held on March 7, 1980. This supplemental order is entered in accordance with paragraph 6 of the Order of March 10, 1980.

At the pretrial conference of March 7, 1980 Bernard J. O'Malley, attorney for Benford M. Walker, Executor of this estate, requested some direction from the Court pertaining to his responsibility, if any, to participate in the litigation of the contest of the will admitted herein.

The Court upon examination of the files and records herein finds:

1. That all person interested in the will contest are of legal age and all are represented by legal counsel, with the exception of Glenn D. Walker who has elected to appear pro se.

2. On the record herein the will contest is one of personal interest between proponents and contestants of the will.

3. It does not appear and no showing has been made that any substantial estate interest appears that would justify the nominated executor to incur expenses or attorney fees in the will contest.

IT IS THEREFORE ORDERED that Bernard J. O'Malley, attorney for the estate and the executor, Benford M. Walker, has no responsibility to participate in the pending will contest herein.

Signed this 24th day of March 1980.